BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In the Matter of	)	
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	

COMMENTS OF THE MISSOURI INDEPENDENT TELEPHONE COMPANY GROUP ("MITG")

The Missouri Independent Telephone Company Group ("MITG")[1] hereby submits its Comments in response to the Commission's Public Notice seeking comments on the Petition for Declaratory Ruling filed by Cellular Telecommunications & Internet Association ("CTIA") on May 13, 2003. After CTIA filed a Petition for Declaratory Ruling on January 23, 2003, seeking a formal declaration as to whether historic wireline rate-center boundaries can be used by carriers to limit consumers' access to wireline number portability, CTIA filed a Second Petition for Declaratory Ruling on May 13, 2003, requesting the FCC to address the following: (1) a number porting interval that promotes competition; (2) number portability without requiring interconnection negotiations; (3) resolve the intercarrier dispute between Bell South and Sprint (rate and routing issues); (4) address Bell South's claims with respect to number portability by CMRS providers utilizing Type One interconnection; (5) decide how to define the top 100 MSA's; (6) decide if it will keep the bona fide request requirement; and (7) decide when carriers are obligated to provide support for nationwide roaming.

I. Intercarrier Disputes – Rating/Routing issues:

LNP

[1] The MITG consists of six rural, independent telephone companies: Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial, Inc., and Northeast Missouri Rural Telephone Company. Some of these companies own and operate their own access tandems.

The need to address rate and routing issues arises because CTIA's petitions suggests that it is seeking service provider portability, when in practice, CTIA is seeking location portability. Under 47 USC 251(b)(2), Congress mandated all LECs to provide *number portability*, stating that LECs have "[t]he duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission." Two types of number portability have been considered by the FCC: 'service provider portability' and 'location portability'. As pointed out by CenturyTel, Inc. in it's opposition to CTIA's First Petition, the FCC has mandated service provider portability,[2] and limited wireline LNP to ILEC rate center boundaries to ensure the proper rating and routing of calls.[3]

The Commission has defined '*number portability*' as "the ability of users of telecommunications services to retain, *at the same location*, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another." 47 CFR 52.21(k) (emphasis added). This is the same definition for '*service provider portability*'. 47 CFR 52.21(p). In other words, the Commission found that the duty to provide number portability is synonymous with the duty to provide service provider portability.

CTIA suggests that it has requested service provider portability.[4] However, as several commenters have pointed out, the type of number portability requested by CTIA fits the

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[2] Opposition of CenturyTel, Inc. to the Petition for Declaratory Ruling of the Cellular Telecommunications and Internet Association ("CenturyTel"), p. 2 (Feb. 26, 2003), citing Telephone Number Portability, *First Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 95-116, 11 FCC Rcd 8352 (1996).

[3] *Id.*, citing Telephone Number Portability, *Second Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 95-116, 12 FCC Rcd 12281 (1997).

[4] CTIA states in its First Petition filed with the FCC on January 23, 2003, "the Commission explained that '*service provider portability* will encourage CMRS-wireline competition ...". p. 13

description of location portability.[5] "The term location portability means the ability of users of telecommunications services to retain existing telecommunications numbers without impairment of quality, reliability, or convenience *when moving from one physical location to another*." 47 CFR 52.21(i) (emphasis added). CTIA seeks to have numbers ported outside of the rate centers to which they were originally assigned. This involves porting numbers *from one physical location to another*. As CTIA admits, the FCC has declined to require location portability.[6]

> The Nebraska Rural Independent Companies noted that the Commission "found that most parties agree that implementation of location portability poses many problems, including: (1) loss of geographic identity of one's telephone number; (2) lack of industry consensus as to the proper geographic scope of location portability; (3) substantial modification of billing systems and consumer confusion regarding the charges for calls; (4) loss of ability to use 7-digit dialing schemes; (5) the need to restructure directory assistance and operator services; (6) coordination of number assignments for both customer and network identification; (7) network and switching modifications to handle a two-tiered numbering system; (8) development and implementation of a system to replace 1+ as toll identification; and (9) possible adverse impact on E911 services."[7]

The FCC has determined that location portability is an issue delegated to the states.[8] The North American Numbering Council, stated "[i]f location portability is ordered by a state

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(emphasis added). "This Petition is not a request for location provider portability which the Commission has declined to require. When a CMRS carrier's service area overlaps the wireline rate center, the wireless carrier is providing service within the rate center, thus satisfying the requirements for service provider portability." *Id*. fn. 5.

[5] CenturyTel, p. 4, Comments of the Independent Alliance, pp. 1-2 (02-26-03); Comments of the Nebraska Rural Independent Companies, p. 5 (02-26-03); Initial Comments of Fred Williamson and Associates, Inc. ("FW&A"), p. 4 (02-26-03) (referring to 'inter rate center LNP'); Comments of the Rural Iowa Independent Telephone Association, p. 3; Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies, p. 4 (02-26-03); Comments of the Rural Telecommunications Group, p. 3 (02-26-03).

[6] CTIA states in its First Petition filed with the FCC on January 23, 2003, "This Petition is not a request for location provider portability which the Commission has declined to require." at fn.5; see also *First Report and Order* at 8443.

[7] Comments of the Nebraska Rural Independent Companies, p. 7 (2/26/03), citing Telephone Number Portability, *First Report and Order* at para. 176.

[8] Telephone Number Portability, *First Report and Order* at para. 186; see also Comments of OPASTCO at pp. 4-5.

commission in the context of Phase I implementation of LRN, location portability is technically limited to rate center/rate district boundaries of the incumbent LEC due to rating/routing concerns. Additional boundary limitations, such as the wire center boundaries of the incumbent LEC may be required due to 911 or NPA serving restrictions and/or regulatory decisions."[9] This has been codified at 47 CFR §52.26.

VNXX

Virtual NXX is a situation that arises when a carrier takes a number out of the rate center to which it was originally assigned, and assigns it to a customer in a different geographic location. The necessity for limiting LNP to a LEC rate center/rate district arises from the fact that the numbering system has been built around rate centers which are used for the purpose of tracking numbers and establishing intercompany compensation as either local or toll traffic. Under the current numbering policy, carriers must demonstrate that they are both authorized, and, in the event of acquiring initial numbering resources, capable of providing service in the area for which they seek number resources.[10] This dual obligation helps to ensure that numbers are actually used in the rate centers to which they are assigned.

There has been an exception to the use of numbers in the assigned rate center, and that is when a carrier is providing FX service. However VNXX is not FX service. The USTA described the difference well.[11] Under the FX service, the customer outside of the rate center has a dedicated transport facility to the rate center and pays the local rates for the calls as well as the cost for the dedicated transport facility. There is no dedicated transport facility under VNXX.

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[9] North American Numbering Council, LNP Architecture & Administrative Plan, §7.3 (04/14/98)
[10] *See* Number Resource Optimization, *Report and Order and Further Notice of Proposed Rulemaking*, at para. 97; *see also*, Reciprocal Compensation for CMRS Providers, June 13, 2000 by Charles L. Jackson, JTC, LLC, and William E. Taylor, National Economic Research Associates, Inc., p. 64 filed by USTA in CC Docket 01-92 (Aug. 21, 2001).

Instead of the customer paying for the call and the cost of transport, VNXX enables the customer to avoid paying toll charges, and it enables the carrier using the VNXX to avoid paying transport or access charges. The LEC who is otherwise entitled to access charges on such calls is denied proper compensation, and that LEC may find itself charged for reciprocal compensation by the carrier using the VNXX scheme.

USTA also highlights a decision by the Maine PUC which found that "[a] toll free service that uses trunking facilities rather than dedicated facilities can be provided efficiently (from an engineering perspective) using either Brooks' 'FX-like' configuration or an '800-like' configuration. The significant difference between the two methods is the vastly greater number of NXX codes used in the Brooks configuration."[12] The Maine PUC continued by expressing its thoughts that Brooks was simply trying to avoid paying access charges by having the traffic defined as 'FX-like' service as opposed to '800-like' service.[13] With respect to CMRS traffic, the FCC stated that, based on its authority under § 251(g), access charges that applied to such traffic at the time of the Telecommunications Act of 1996 would continue to apply to such traffic.[14] When CMRS carriers fail to negotiate agreements with rural carriers, opting to route traffic indirectly through RBOC tandems, such traffic is received by the rural carriers pursuant to their tariffs, not agreements reached under the provisions of sections 251 and 252. The Maine PUC concluded that "When a carrier uses the facilities of others, it cannot unilaterally redefine

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[11] Reply Comments of USTA, CC Docket 01-92, p. 12 (11-05-01).
[12] Reply Comments of USTA, CC Docket 01-92, p. 12 (11-05-01), citing Maine Public Utilities Commission Investigation into Use of Central Office Codes (NXXs) by New England Fiber Communications, *Order Requiring Reclamation of NXX Codes and Special ISP rates by ILEC's*, Docket No. 98-758 (June 30, 2000).
[13] Id.
[14] In the Matter of the Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, CC Docket No. 96-98, para. 1043 (rel. Aug. 8, 1996).

wholesale arrangements between itself and the carriers that actually carry its traffic simply by declaring the calls are 'local' if that recharacterization is to its financial advantage."[15]

The relocating of numbers from their assigned rate centers is a risk to the integrity of the existing system of delegating scarce number resources. VNXX is a clever scheme to 'trick' the LERG into routing calls to an outside rate center through LECs and RBOCs as local calls, thereby bypassing the interexchange carriers. This is a violation of the FCC's regulations requiring dialing parity. Furthermore, VNXX forces ILECs to carry calls beyond their exchange boundaries using the facilities of intermediate carriers with whom the ILECs have no agreements for the transport of such interexchange calls routed as 'local.' VNXX degrades the established regime for intercarrier compensation.

As succinctly stated in the Comments of the Oklahoma Rural Telephone Companies:

> "LECs are not obligated to provide 'virtual' NXXs as part of their obligation to provide nondiscriminatory access to telephone numbers. ....
> 'Virtual' NXXs raise the unbundling requirement of section 251(c) of the Act. A 'virtual NXX involves the programming of an RTC switch to recognize the NXX and route calls to certain facilities for transmission to the CMRS carrier's location in a distant location. The function of routing and transmission of calls is one of the primary obligations under Section 251(c)(2). The Commission should clarify that until a rural telephone company receives a request for interconnection under section 251(c) of the Act and the state Commission terminates such company's rural exemption under section 251(f), the rural telephone company cannot be required to provide access to 'virtual' NXXs." Id. CC Docket No. 01-92, DA 02-1740, at pp. 5-7.

II. Type One Interconnection

In response to CTIA's request that the Commission address Bell South's claims with respect to number portability by CMRS providers utilizing Type One Interconnection, the MITG supports the Comments of John Staurulakis, Inc. filed on August 8, 2002 in response to Sprint's Petition for Declaratory Ruling filed on May 9, 2002 in CC Docket No. 01-92, as follows:

[15] Id.

> "On pages 15-16 of its petition, Sprint argues that interconnecting carriers can choose the type of interconnection based on their most efficient technical and economic choices. Sprint appeals to pre-1996 CMRS rules for the opportunity to select the type of interconnection. Section 20.11 of the Commission's rules was established to permit a CMRS provider the ability to select the type of interconnection deemed appropriate. These types of interconnection refer to Type 1, Type 2A, and Type 2B generally. Despite the ability of the CMRS provider to select a certain type of connection, the type of connection addresses the technical aspects of a physical interconnection and does not in any way, nor should it, dictate the method of interconnection, referring to direct or indirect arrangements that have been codified in the Communications Act of 1934, as amended. In support of this claim, JSI cites 47 CFR 20.11(c) which states that 'local exchange carriers and commercial mobile radio service providers shall also comply with applicable provisions of Part 51 of this chapter.' Section 20.11(a) does not refer to the method of interconnection because this rule was codified prior to the Act, which distinguishes between direct and indirect interconnection. Moreover, the provisions of Part 51 of the Commissions rules are shown to recognize the interconnection duty is limited to within the carrier's network (or service territory)." *Id*. at pp. 10-11 (footnotes omitted).

III. Interconnection Agreements

CTIA offers that carriers can address rating and routing issues through a 'standard service-level porting agreement' ("SLA"). CTIA recommends that simple SLAs are sufficient for this purpose as opposed to the more complex interconnection agreements. The MITG agrees with SBC Communications, Inc. and USTA that "there is no such thing as a 'standard service-level porting agreement", that the "agreed upon document that sets out the terms and conditions by which incumbent LECs provide number portability is an interconnection agreement and must be filed with the appropriate state commission."[16] CTIA suggests that any issues not specifically addressed in the SLA can be dealt with pursuant to the interconnection agreements carriers already have in place. However, many CMRS carriers do not have interconnection agreements with rural ILECs like the MITG. Instead, they route traffic indirectly to rural LECs through an RBOC tandem switch.

[16] see SBC Communications Inc. at p. 7-8; USTA Reply Comments at p.6, citing 47 U.S.C. §252(a)(1).

Without interconnection agreements, CMRS carriers can avoid paying terminating compensation for the use of the LEC networks. As pointed out in comments by the South Dakota Telecommunications Association, citing NECA/NTCA, "compensation shortfalls may also result when carriers seek to use NPA-NXX codes with routing points that differ from rating points, as in the case for numbers ported to a wireless carrier's POI situated outside the rural carrier's serving area. In such cases, wireless carriers can circumvent intercarrier compensation mechanisms and obtain indirect interconnection to independent ILEC networks without paying compensation for terminating traffic."[17]

Under the Act, only section 251(c) imposes obligations for the routing of traffic.[18] Rural ILECs are exempt under Section 251(f) from Section 251(c) requirements until a State Commission terminates the exemption. However, as pointed out in the Comments of JSI, once a rural exemption is terminated, Section 251(c) does not require ILECs to interconnect outside of their networks.[19] A CMRS carrier is not *entitled* to the establishment of a rate point within an ILEC's network and a route point outside of that network. Thus any attempt by a CMRS carrier to impose a rate point within an ILEC's network and a route point outside of the ILEC's network must fail unless the CMRS carrier makes a request and such an arrangement becomes part of a comprehensive agreement between *all* carriers necessary to route that call, including agreement as to intercarrier compensation. The FCC should clarify whether such arrangements, even if agreed to by all carriers necessary to route the call, are permissible given the national concern

[17] Reply Comments of the South Dakota Telecommunications Association, CC Docket No. 95-116, pp. 3-4 (03-13-03), citing Comments of National Exchange Carrier Association, Inc. and National Telecommunications Cooperative Association at 6-7.
[18] 47 USC 251(c); See eg. Comments of John Staurulakis, Inc., CC Docket __ , p. 9-10, 14-15 (filed August 8, 2002).
[19] Comments of John Staurulakis, Inc., CC Docket No. 01-92, pp. 9-10 (Aug. 8, 2002).

over number resources, the requirements of dialing parity, and any potential adverse effects on administering 911 services.

Without such an agreement, CMRS carriers may obtain LNP only through a request for direct interconnection pursuant to section 251(c) of the 1996 Act. Through a direct interconnection the carriers can negotiate all necessary technical arrangements for having numbers ported and for intercarrier compensation. In the absence of a direct interconnection, CMRS may still terminate traffic to the MITG pursuant to their tariffs, but no LNP provisions are available through those tariffs. In Missouri, the Western District Court of Appeals has held that "[t]he tariffs reasonably fill a void in the law where the wireless companies routinely circumvent payment to the rural carriers by calculated inaction. The tariffs provide a reasonable and lawful means to secure compensation for the rural carriers *in the absence of negotiated agreements.*"[20] The Western District Court's opinion was issued with respect to rural carrier's wireless termination tariffs. The Missouri Cole County District Court reached a similar conclusion with respect to the rural carrier's access tariffs on May 12, 2003.[21]

IV. Bona fide request requirement

The FCC incorporated the *bona fide* request requirement before pressing LNP requirements onto rural and small LECs to "address the concerns of smaller and rural LECs with end offices within the 100 largest MSAs that they may have to upgrade their networks at significant expense even if no competitors desire portability."[22] Those concerns of the small and

[20] *State of Missouri, ex rel., Sprint Spectrum L.P., d/b/a Sprint PCS et al. v. The Missouri Public Service Commission, et al.*, 2003 WL 1960681, (Mo.App.W.D. April 29, 2003) (emphasis added).
[21] *State of Missouri, ex rel. Alma Telephone Company et al. v. Public Service Commission of the State of Missouri*, Case No. 02CV324810.
[22] Telephone Number Portability, *First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 7236 at para. 59 (1997).

rural LECs are still relevant. Furthermore, CTIA's petition makes clear that CMRS do not want to establish facilities in the exchanges of these small and rural LECs. Instead, they want to port numbers outside of the rate centers of the small and rural carriers based on the MTA as their local service area. The MTA was defined by the FCC for the purpose of reciprocal compensation arrangements under section 251(b)(5), not number portability. With respect to traffic indirectly transitted to rural LECs, there typically are no negotiated arrangements. Furthermore, such a situation would result in a competitive advantage for CMRS carriers, and a significant disadvantage to the small and rural LECs who often serve only one exchange. The disparity in each carrier's 'local service territory,' i.e. the exchange for the small or rural LEC, and the MTA for the CMRS carrier, will result in the CMRS carrier being able to port any and all of the numbers from the LEC exchange, while the LEC (being limited to providing service within its exchange territory) will not be able to port numbers from the CMRS carrier because of the CMRS carrier's choice to assign its numbers outside of the LEC's exchange. CMRS-to-LEC number portability, for this reason as well as the reasons discussed above, should be limited to the geographic location of the LEC's exchange.

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